



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: OCTOBER 31, 2022

IN THE MATTER OF:

Appeal Board No. 624485

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determinations holding the claimant ineligible to receive benefits, effective beginning August 17, 2020 through November 29, 2020, and December 7, 2020 through March 21, 2021, on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed June 15, 2022 (), the Administrative Law Judge granted the claimant's application to reopen A.L.J Case No. 022-02875, overruled the Commissioner of Labor's timeliness objection, and overruled the initial determinations.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determinations holding the claimant ineligible to receive benefits, effective beginning August 17, 2020 through November 29, 2020, and December 7, 2020 through March 21, 2021, on the basis that the claimant did not comply with registration requirements. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. In light of the

contentions on appeal that the Commissioner was not on notice that the

claimant would be raising the defense of his inability to access the Department of Labor website and/or contact the Department by telephone, since this was not stated prior to the hearing, a further hearing is needed to give the Commissioner of Labor the opportunity to address the claimant's contentions made at the June 14, 2022 hearing.

At the remand hearing, the Commissioner of Labor shall be represented and be given the opportunity to cross-examine the claimant on the testimony he provided at the June 14, 2022 hearing. The Commissioner's representative shall also be prepared to provide testimony and other evidence to address the claim that individuals were experiencing problems reaching the Department either through its website or by telephone beginning in August 2020 and through the periods at issue in these determinations. The Commissioner shall produce documents including, but not limited to, the call history report connected to the claimant's social security number during the period at issue, and the claimant log reflecting all communications between the claimant and the Department during that period. The representative shall produce a witness to testify regarding how these records are compiled, and whether the call history report reflects each attempt by a claimant to contact the Department by telephone.

The claimant is directed to produce copies of telephone records and other documentation to establish his attempts to contact the Department online and/or by telephone during the periods at issue in the determinations.

Any relevant documents produced at the remand hearing shall be received into evidence after the appropriate confrontation and opportunity for objection.

In addition, the claimant shall be questioned regarding the content of his January 20, 2022 letter, which was part of his hearing request, and the August 18, 2021 Secure Message he sent to the Department of Labor, both of which are in the file but not made part of the record. Specifically, the claimant shall be questioned regarding what these communications indicate regarding his inability or failure to file a claim for unemployment benefits following his separation from employment in August 2020. The claimant shall also be questioned about his responses on the "Failure to Certify" questionnaires, which are in the file but were not made part of the record. The communications and questionnaires shall be received into the record after the appropriate confrontation and opportunity for objection.

Finally, the Commissioner of Labor's representative should be prepared to explain the Commissioner's position regarding why the effective date of the claimant's claim is November 30, 2020, but one of the determinations at issue denies him eligibility for the period beginning December 7, 2020.

The parties are placed on notice that failure to produce the evidence directed by the Board may result in the hearing Judge or the Board taking an adverse inference against that party, concluding that the evidence not produced would not have supported the party's position.

The hearing Judge may receive into the record any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it overruled the initial determinations holding the claimant ineligible to receive benefits, effective beginning August 17, 2020 through November 29, 2020, and December 7, 2020 through March 21, 2021, on the basis that the claimant did not comply with registration requirements, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of the claimant's ineligibility to receive benefits, effective beginning August 17, 2020 through November 29, 2020, and December 7, 2020 through March 21, 2021, on the basis that the claimant did not comply with registration requirements, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the initial determinations holding the claimant ineligible to receive benefits, effective beginning August 17, 2020 through November 29, 2020, and December 7, 2020 through March 21, 2021, on the basis that the claimant did not comply with registration requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and

the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER